



EUROPEAN CENTRE FOR PRESS & MEDIA FREEDOM

Latvia: Proposal to make criminal defamation a public prosecution instead of a private process of accusation

<http://ecpmf.eu/news/legal/latvia-proposal-to-make-criminal-defamation-a-public-prosecution-instead-of-a-private-process-of-accusation>

Ieva Andersone

The Latvian Criminal Law, adopted in 1998, contains a criminal liability provision for defamation, including defamation in mass media. There have been arguments on whether this provision impairs the freedom of the press, but nevertheless, the article 157 so far has remained in the Latvian Criminal Law. It provides that a person who knowingly distributes fictions about another person, knowing them to be untrue and defamatory, in printed or otherwise reproduced material, as well as orally, is punishable by community service or a fine. Furthermore, the applicable punishment for defamation in mass media is the temporary deprivation of liberty, or community service, or a fine (as amended by the amendments of 12 June 2003; 12 February 2004; 19 November 2009; 13 December 2012)

The relevant provision has not been applied very frequently. Currently, any criminal charges in defamation may be brought only through a private accusation procedure. This means that the criminal investigation and prosecution authorities would not start a criminal procedure on their own initiative. The potential “victim” who wants to start the private accusation procedure himself must act as a prosecutor and submit a complaint to the court, which then may initiate criminal proceedings.

There are no complete statistics publicly available on how many criminal defamation proceedings have taken place within recent years. However, according to publicly available information, most of the procedures have ended with an acquittal of the accused person. Thus, at first glance, it may seem that there is no significant problem to the freedom of speech.

On the other hand, it must be taken into account that the mere fact of the initiation of a criminal procedure and the placing of a journalist or an editor in the status of an accused person may potentially have a negative impact on the freedom of speech. The status of accused person is a special procedural status within criminal procedure law, and it may cause significant problems, e.g., the person must use resources for a legal defence, and to attend court hearings.

Moreover, according to legal doctrine and commentaries, the editor of a newspaper or another mass medium may not be guilty for the defamation in a criminal sense: a personal liability and

direct intention must be established, and that may only belong to the author of the publication. The court practice has confirmed this. Nevertheless, there are still criminal proceedings being initiated not only against the authors of the publications, but also against the editors.

For example, there has been a case where criminal proceedings had been started against an editor of an internet portal for a defamatory commentary published by one of the users. The court finally dismissed the charges, stating that the editor may not be criminally liable for the contents of commentaries (of course, this does not preclude a potential civil liability in a civil defamation case, where other criteria prevail). Due to the above reasons the professional organisations of journalists have advocated for the abolishment of this provision in the Criminal Law.

However, there are also serious counter arguments in favour of the provision. Legal professionals have indicated that this provision provides a safeguard in case of malicious and directly intentional publications of knowingly untrue information. The provision is applicable not only to journalists, but to any person who would use mass media in order to distribute knowingly untrue information, e.g., to politicians who might like to denigrate their opponents.

As a potential solution there has been a proposal to abolish the private accusation procedure for the implementation of this provision. Instead, there would be the public accusation procedure lead by criminal investigators and prosecutors who would then make the first assessment whether the case merits a criminal procedure, or whether it is purely an issue of civil liability. The application of the public procedure might decrease the number of cases where the private accusation procedure is started by a potential victim in bad faith, or in order to restrict the freedom of the press.

At the moment of writing, there has not been a clear initiative to amend the relevant provision or to change the applicable procedure. Much depends also on judges who have to apply this article now and decide whether to start criminal proceedings. If judges would scrutinise the applications in more detail, taking into account also the freedom of speech argument, there might be even fewer procedures started.

The criminal Law of the Republic of Latvia (in Latvian: Krimināllikums) is available in Latvian and English language [here](#).

Ieva Andersone, LLM (Cantab.), Attorney-at-Law, SORAINEN